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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,469	10/07/2003	Kevin T. Connelly		6662
7590	11/17/2005		EXAMINER	
Solar Dynamics Corporation 4487 A-B Ashton Rd. Sarasota, FL 34233			AYRES, TIMOTHY MICHAEL	
			ART UNIT	PAPER NUMBER
			3637	
			DATE MAILED: 11/17/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/679,469	CONNELLY ET AL.
	Examiner Timothy M. Ayres	Art Unit 3637

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 September 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 5-50 is/are pending in the application.  
 4a) Of the above claim(s) 38,40,43 and 44 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 5-37,39,41,42 and 45-50 is/are rejected.  
 7) Claim(s) 38,40,43 and 44 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 07 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

This is a final office action on the merits of application SN 10/679,469.

### ***Claim Objections***

1. Claim 38 is objected to under 37 CFR 1.75(c) as being in improper form because the claim is dependent on itself. See MPEP § 608.01(n). Claims 40,43, and 44 are also objected since they depend from claim 38. Accordingly, the claims 38, 40, 43, and 44 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 17-19, 21, 28, 29, 31, and 44-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 17 recites the limitation "said ends" in line 2. There is insufficient antecedent basis for this limitation in the claim.

5. Claims 18 and 19 recite the same limitations onto claim 17, one of the two claims needs to be canceled.

6. Claim 21 recites the limitation "said angle" in line 1. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 28 recites the limitation "said ends" in line 2. There is insufficient antecedent basis for this limitation in the claim.
8. The term "about" in claims 21, 31, 44, and 50 is a relative term which renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear how close about is to 22 degrees.
9. In claim 46 lines 2 and 3 recite the same limitations of vertical members and angled members as claim 45 lines 7 and 8 does.
10. Claim 47 recites the limitation "said ends" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

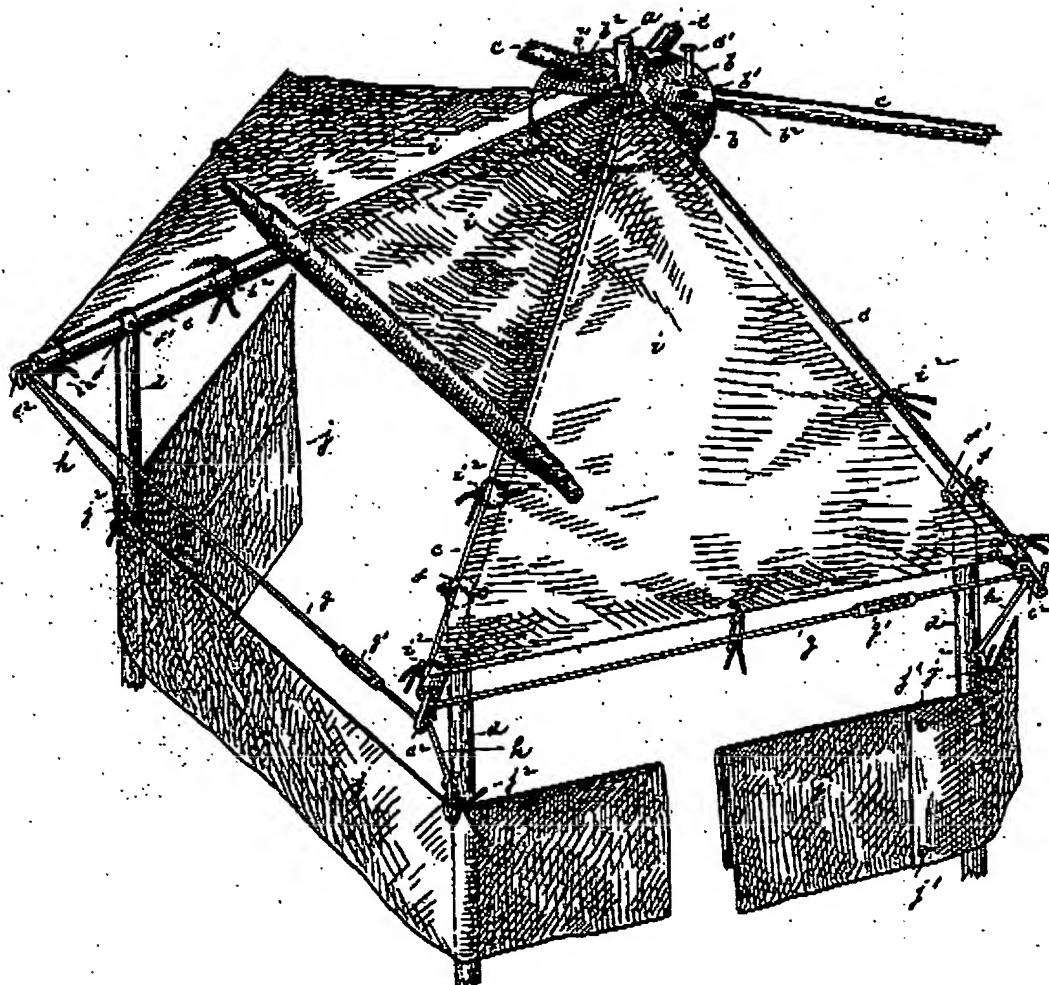
11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 5, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 589,563 to Jensen in view U.S. Patent 5,662,525 to Briggs. Jensen '563 discloses a tent with vertical support columns (d). On the top of the vertical support columns (d) is an eye (f) where a hip beam (c) can pass through so that part of the hip beam (c) is cantilevered from the support columns (d) and the other part extends

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upward to the cap (b). At the eye (f) is a clamp-screw (f') to hold the hip beam (c) in place. The tent includes a plurality of hip beams (c). The vertical columns (d) and the hip beams (c) are tubular in shape with tubular ends. Canopy flaps (i) are placed over the hip beams (c). A play area is the area/space inside a first perimeter defined by the wall-strips (j) that wrap around vertical columns (d). The outer edges of the canopy flaps (i) create a second perimeter. The second perimeter being larger than the first as seen in figure 1. The examiner considers the hip beam (c) to be either a hip beam or a cantilever beam since part of it is cantilevered, but not both at the same time.



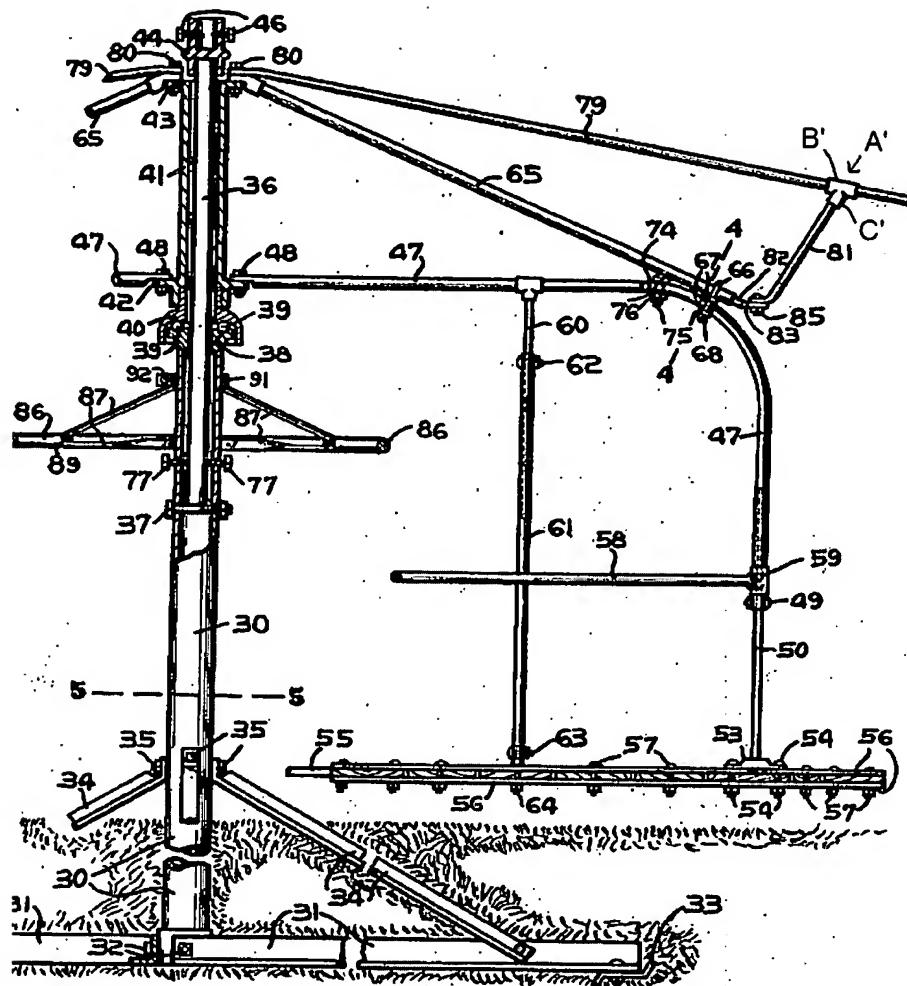
Jensen '563 Figure 4

13. Jensen '563 does not expressly disclose the children's play area as a platform that is suspended from the vertical columns and has play devices on it and the angle of the hip beam being 22 degrees. According to *Webster's II New Riverside Dictionary*, the definition of "on" is a. Position upon and in contact with. b. Location at or along. c. Proximity. d. Attachment to or suspension from. Taking the broadest reasonable interpretation, the examiner will consider "on" to imply the limitation of proximity. Briggs '525 discloses a children's play structure (20) that has vertical columns (21) that suspend and support a platform (57) in proximity of a plurality of children's play devices (22-37). Roof panels (59) are attached to the top of the vertical columns (21) and are directly above the platform (57). At the time of the invention it would have been obvious for a person of ordinary skill in the art to take canopy of Jensen and install it on the columns and replace the roof panels of Briggs so that children would have been protected from the weather. It would have been an obvious matter of design choice to modify Jensen by having the hip beams extend at an angle of 22 degrees from the horizontal, since the applicant has not disclosed that having the hip beam extend at this specific angle solves any stated problem or is for any particular purpose and it appears that the structure would perform equally well with the hip beams at any acute angle.

14. Claim 6-10, 12, 13, 15, 16, 22, 23, 25, 27, 32, 33, 36, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 589,563 to Jensen in

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view of U.S. Patent. 5,662,525 to Briggs as applied to claim 5 above, and further in view of US Patent 1,878,758 to Clayton. Jensen '563 in view of Briggs '525 discloses every element as claimed and discussed above except brackets on top of the vertical columns and a ridge beam. Clayton '758 discloses a merry go around with a platform that rotates around a single column. A removable canopy structure is attached to the framework associated with supporting the platform. The canopy structure is made up of a hip beam (79) that has a cantilevered section sticking through an angled member (B') of bracket (A'). A brace (81) supports the bottom of the bracket (A') by connecting to a vertical member (C') of the bracket (A'). If the bracket (A') is viewed from along the axis of the brace (81) then it can be seen that the angled member (B') of bracket (A') is at an angle other than 90 degrees from the vertical member (C') of the bracket. At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the bracket of Clayton and use it in the place of the eye (f) of Jensen so that the structure is sturdier. The bracket of Clayton will still allow the structure of Jensen to perform its intended role of collapsibility since nothing is to be permanently altered.



## Clayton '758 Figure 2

15. Regarding claims 12 and 25, it is well known in the roofing art to use a ridge beam when framing a roof and especially on a hipped roof that is not square.

## ***Double Patenting***

16. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

17. Claims 11, 14, 17-20, 24, 26, 28-31, 34, 35, 37, 39, 41, 42, and 47-50 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 6,651,685 to Connelly et al. in view of U.S. Patent. 5,662,525 to Briggs. Although the conflicting claims are not identical, they are not patentably distinct form each other because the columns, brackets, and beams of the canopy structures are identical. Although it is implied that the canopy structure covers the play area, it is also an obvious matter of design choice to make the perimeter of the canopy substantially larger than the perimeter of the play area, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Regarding all of the claims, a playing platform suspended by and between vertical columns is disclosed. At the time of the invention it would have been obvious for a person ordinary skill in the art to take the canopy of

Connelly '685 and use the playing platform of Briggs '525 as described above as the children's play area. Briggs' '525 platform also includes a plurality of children's play devices. The rod is considered to be the connector tube that is recited in claim 4 of patent 6,651,685. The acute angle claimed in Connelly '685 includes the angle of about 22 degrees. The method of claims 34, 37, 39, 41, and 42 is obvious given the structure as described.

### ***Response to Arguments***

18. Applicant's arguments filed 9/30/05 have been fully considered and are not persuasive. The 112 rejection of "about" still needs to be addressed along with the other remaining 112 issues whether the claims are dependent from an allowable claim or not. With regards to changing the independent claims to read with "located on" instead of "associated with", the definition of "on" is broadly interpreted as to be in proximity and therefore the rejection on claim 5 is held.

19. Applicant's arguments, filed 9/30/05, with respect to the rejection(s) of claim(s) 17, 19, and 45-50 under 103 to Jensen over Shelton and claim 6-12, 14-16, 20, 13, and 22-44 under 103 to Jensen in view of Briggs and further in view of Shelton have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the amendment with Jensen in view of Briggs and further in view of Clayton for claims 6-12, 14-16, 13, 45, and 46 and a double patent rejection for claims 17, 19, 20 and 47-50.

***Conclusion***

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TMA  
11/10/05

*Jones*

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